UNITED STATES SENATOR • IOWA
CHUCK GRASSLEY

http://grassley.senate.gov
press@grassley.senate.gov

Contact: Jill Kozeny, 202/224-1308
Jill Gerber, 202/224-6522

Floor Statement of Senator Chuck Grassley, of Iowa
Sanctity of Health Plan Contracts — Patients' Rights Legislation
Wednesday, June 27, 2001

Mr. President, I rise today to address what I feel is a fundamental, fatal flaw in the Kennedy-McCain Patients' Rights legislation.

The flaw relates to how the bill treats health plan contracts, and the precedents that this treatment sets for all contracts, not just those between health plans and employers.

As currently drafted, the bill states that specific definitions and terms in health plan contracts can be entirely thrown out in favor of another definition made up by a third party charged with reviewing a plan's decision to deny care. This basically invalidates all contracts between health plans and employers and makes them non-binding. Putting the terms of health plan contracts on the chopping block undercuts the very purpose of the health plan contract itself.

If these contracts are not binding, the health plan will have no way of knowing what standard it should follow in making coverage decisions, the employer will have no way of knowing what its costs will be, and the patient will have no way of knowing what kinds of items and services are covered. In short, the contract won't be worth the paper its printed on.

How do you do business without a contract? Quite frankly it's almost impossible to imagine doing business at all without a binding agreement. The Kennedy-McCain bill forces managed care plans to do business in a way that no other industry is forced to do - by that I mean without a binding and valid contract.

Now, let me stop here for a minute and talk about these health plan contracts. First, contracts between health plans and employers are actually negotiated. Employers, usually with the help of unions and other worker representatives, bargain for specified coverage in order to meet the unique needs of their workers. Every contract is different. What's more, these contracts are typically reviewed and approved by state insurance regulators before they become effective. The whole process is deliberative, time consuming and, all told, is truly a "meeting of the minds."

The Kennedy-McCain bill says, in effect, to heck with that meeting of the minds. The bill gives unrelated third parties reviewing patient complaints unprecedented authority to take out contract terms that were bargained for in good faith and throw them in the trash.

This authority to override contracts – at any time and for any reason – goes far beyond the authority given even to judges, who in all but the rarest instances are obliged to apply the terms of a contract. And where judges must explain their rationale in opinions and are generally accountable as public officials, these third party reviewers as outlined in the Kennedy-McCain legislation are private citizens and are not accountable to anyone at all.

Mr. President, I do believe that every patient should have a right to an independent, external review of a health plan's decision to deny care. But that right cannot be without some rationality and accountability.

Third parties charged with reviewing patient complaints should have broad discretion to thoroughly assess, and even overturn, a plan's decision so long as that authority is exercised within the four corners of the contract. Kennedy-McCain authorizes third parties to veer far, far away from those four corners, and to tear up the contract altogether.

I encourage my colleagues to think about what it would be like if the contracts that they live by everyday – contracts for life insurance, home mortgages, even car leases – could be torn up and rewritten by an unaccountable third party at any time.

Moreover, I encourage my colleagues who know small business owners or who were themselves small business owners, to think about doing business without the security of a binding contract. I believe that those of my colleagues who do think about this will come to understand that the consequences of allowing contract terms to be thrown out could be disastrous, and that all contracts, whether involving a health plan or not, deserve the deference that our laws traditionally give them.

I urge my colleagues to reject the Kennedy-McCain approach to health plan contracts and to support the amendment - which is an approach that honors both the integrity of the contract itself, as well as the intent of the parties to it. In the end, it's the patient who wins under this amendment.